

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
GABRIEL MOSES BURKE,

Plaintiff,

-against-

NHA MINH, et al.,

Defendants.
-----X

NOT FOR PUBLICATION
MEMORANDUM & ORDER
23-cv-2860 (CBA) (SJB)

AMON, United States District Judge:

On March 27, 2024, Defendant Nha Minh filed a motion to dismiss this action for failure to prosecute. (ECF Docket Entry (“D.E.”) # 32 (“Def. Mot.”).) On July 30, 2024, I referred this motion to the Honorable Sanket Bulsara, United States Magistrate Judge, for report and recommendation (R&R). (Text order dated July 30, 2024.) On August 8, 2024, Magistrate Judge Bulsara issued an order denying Defendant’s motion without prejudice on the basis that (1) Defendant’s motion was premature; (2) the motion was noncompliant with this Court’s Local Rules; and (3) Plaintiff’s counsel was “suffering from a significant illness which has impeded his ability to practice.” (D.E. # 33 (“MJ Op.”).) Because I referred this motion to Magistrate Judge Bulsara for report and recommendation, I construe Magistrate Judge Bulsara’s August 8, 2024 order as such.

When deciding whether to adopt an R&R, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). To accept those portions of the R&R to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (quoting Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)). No party has objected

to the R&R, and the time for doing so has passed. After reviewing the record and finding no clear error, I adopt Magistrate Judge Bulsara's R&R in full.

Therefore, I deny Defendant's motion to dismiss for failure to prosecute without prejudice. I observe that although Magistrate Judge Bulsara directed Plaintiff's counsel to explain his failure to participate in proceedings by August 29, 2024 (MJ Op. 1-2), that date has come and gone without word from Plaintiff's counsel. Defendant may renew its motion to dismiss for failure to prosecute in a form compliant with this Court's Local Rules no later than September 27, 2024.

For these reasons, the Court DENIES Defendant's motion to dismiss for failure to prosecute without prejudice.

SO ORDERED.

Dated: September 6, 2024
Brooklyn, New York

s/Carol Bagley Amon

Carol Bagley Amon
United States District Judge